

In the Supreme Court of the State of Alaska

Paul T. Dunham,

Appellant,

v.

Kiana A. Johnson,

Appellee.

Supreme Court No. **S-17979**

Order

Date of Order: **6/2/2021**

Trial Court Case No. **3AN-19-09860CI**

Before: Bolger, Chief Justice, Winfree, Maassen, Carney, and
Borghesan, Justices

The court has received the affidavit of Appellant's counsel, Ms. Nyquist, in response to the court's Order To Show Cause of 5/3/2021. Appellee was given opportunity to respond but has elected not to.

Counsel's affidavit provides the information requested in the court's show-cause order. The affidavit indicates that the delays in transcribing the electronic record in this case are not attributable to Ms. Nyquist but rather to a former associate attorney, to the client's financial situation, and to miscommunications between Ms. Nyquist's staff and Anchorage Transcription, Inc. In addition, the failure to attach affidavits to previous motions for extension, required by the appellate rules, appears to be attributable to the former associate.

Counsel's affidavit highlights significant omissions in the affidavit of Natasha Falke, dated 4/9/2021, that was submitted to support the third motion for extension. Ms. Falke's affidavit stated that "in early March 2021, I instructed a staff member to obtain various estimates" for preparing transcripts and that "the required information was then forwarded on to Anchorage Transcript, Inc., the transcription

company chosen to prepare the transcript.” It then stated: “On Wednesday, April 7, 2021, I contacted the company and was informed that, ‘. . . it turns out we aren’t as familiar with Alaska Court Rules as we thought.’ ” The affidavit then states that the next day Ms. Falke “reached out to the company regarding their misrepresentation of services.”

Ms. Falke’s affidavit did not mention significant details:

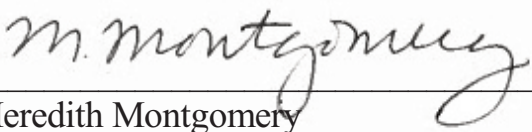
- Counsel’s staff did not reach out to Anchorage Transcription until March 19th, despite Ms. Falke’s statement that she instructed her staff to obtain estimates in “early March”; and
- Counsel’s staff obtained a complete estimate from Anchorage Transcription on March 22nd, but did not engage Anchorage Transcription until April 7th because the client had not yet secured the funds necessary to pay for transcription.

Because of these omissions, Ms. Falke’s affidavit implies (and appears calculated to imply) that Anchorage Transcription, Inc. was retained in a timely manner and that the delays in transcription from early March to early April were the fault of the transcriber. But in fact this was not the case, as Ms. Nyquist’s affidavit now reveals. Ms. Falke’s affidavit and the motion it supported therefore did not candidly explain the reasons why additional time was needed for transcription. Had these pleadings been more forthright, Appellee’s counsel may not have been spurred to conduct his own investigation into the reasons justifying the requested extension and thus not incurred that expense for his client.

As noted above, it does not appear that the failure to submit affidavits in support of the first two extension motions was the fault of Ms. Nyquist personally, and we are not able to determine whether the lack of candor in Ms. Falke's affidavit is attributable to Ms. Nyquist either. However, these deficiencies are attributable to her law firm, and it is therefore appropriate to impose sanctions for this conduct on the firm. The firm of Nyquist Law Group LLC is therefore ordered to pay Appellee for the attorney's fees Appellee incurred in responding to Appellant's third motion for extension of time to file its transcripts.¹ Appellee may submit an itemized list of fees incurred, supported by affidavit, within 10 days of this order.

Entered at the direction of the court.

Clerk of the Appellate Courts


Meredith Montgomery

Distribution:

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¹ Alaska R. App. P. 510(b) ("For any infraction of these rules, the appellate court may withhold or assess costs or attorney's fees as the circumstances of the case and discouragement of like conduct in the future may require; and such costs and attorney's fees may be imposed on offending attorneys or parties.").